

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0625, Pamela Dulong Williams v. Cynthia Clark, the court on April 4, 2005, issued the following order:

The defendant, Cynthia Clark, appeals a small claims judgment entered in favor of the plaintiff, Pamela Dulong Williams, by the Portsmouth District Court. We vacate and remand for dismissal of the action.

In pertinent part, the plaintiff alleged in her small claim complaint that the defendant “has unlawfully and without my permission or my knowledge, used my painting image for her advertising to promote her business.” She further alleged in her brief that she originally agreed to allow the use of her painting by the defendant in a showcase. Unbeknownst to her, the defendant photographed the showcase and thereafter used the image on her business cards and in advertisements, despite the plaintiff’s objections. The trial court found that the defendant used the image without authorization from the plaintiff in advertising for her business and awarded damages to the plaintiff.

On appeal, the defendant argues that the trial court lacked subject matter jurisdiction over the plaintiff’s claim because federal district courts have exclusive jurisdiction over any civil actions “arising under” any Act of Congress relating to copyrights. 28 U.S.C.A. § 1338(a) (1993). The plaintiff argues that whether a case “arises under” federal law is decided by application of the well-pleaded-complaint rule, which here would provide that whether this case arises under copyright law must be determined from what necessarily appears in the plaintiff’s statement of her own claim in the small claim complaint. The complaint must establish either that federal copyright law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal copyright law. See Holmes Group, Inc. v. Vornado Air Circulation Systems, Inc., 535 U.S. 826, 830 (2002). We will assume, without deciding, that the well-pleaded-complaint rule applies.

The plaintiff’s small claim complaint simply alleges unauthorized use of her painting image. Nothing in the complaint alleges that any contract or license agreement existed between the parties. We find no state law claim for breach of contract or license agreement alleged in the complaint; rather, the plaintiff’s action is one for copyright infringement, a cause of action created by the federal law and over which the federal district courts have exclusive jurisdiction. See 3 M. Nimmer & D. Nimmer, Nimmer on Copyright § 12.01[A][1][a] (2004); 17 U.S.C.A. §§ 102(a)(5) (1996), 106 (1996 & Supp. 2004), 301(a) (1996); 28 U.S.C.A. § 1338(a).

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Even if we were to consider the plaintiff's allegations in her brief that she originally permitted the defendant to use her painting for a limited purpose, we would reach the same result. An action alleging the use of copyrighted materials by a licensee in a manner that exceeds the scope of the license may also "arise under" federal copyright law. See Greenfield v. Twin Vision Graphics, Inc., 268 F. Supp. 2d 358, 368-72 (D.N.J. 2003); see also 18 C.J.S. Copyrights § 41, at 139 (1990).

Accordingly, we vacate the judgment and remand with instructions to dismiss the small claim complaint for lack of subject matter jurisdiction.

Vacated and remanded.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox
Clerk**

Distribution:

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